

## **REMARKS/ARGUMENTS**

Applicants' attorney kindly requests entry and examination of the amendments made above as well as entry of the added claims 83-85. Claims 1-37 are withdrawn herein, previously Claims 44, 49, 51, 60 and 63 were withdrawn. All such withdrawn claims are withdrawn without prejudice. Claims 52 and 53 are cancelled herein. Certain amendments have been made to Claims 38, 39 and 58 to clarify certain patentable issues. Claims 1-51 and 54-85 are now pending in the application.

If any fees are due in connection with the filing of this Amendment, the Commissioner is hereby authorized to charge such fees to Deposit Account 50-0388 (Order No. SMBRP001).

Reconsideration of these claims in view of the comments made herein is respectfully requested. Should the Examiner have any questions pertaining to this application, Examiner is earnestly invited to telephonically contact the Applicants' attorney at the Examiner's convenience.

### **Rejections of Claims 1-37:**

Claims 1-37 were withdrawn from consideration, without prejudice, in response to Examiner's Restriction Requirement dated August 2, 2004. Consequently, the rejection of these claims is made moot by the withdrawal of these claims.

### **Rejections Under 35 U.S.C. § 103**

#### **Rejections based on *Slagel*, *McCluney*, *Paine* and *Warnecke*:**

Claims 12-15, 21-30, 36, 38-43, 45-48, 50, 52-59, 61, 62, 64-81 have been rejected under 35 U. S. C. § 103(a) as being unpatentable over *Slagel* (USPN 1,800,846) or *McCluney* (USPN 1,953,765) in view of *Paine* (USPN 5,465,901) and *Warnecke, et al.* (USPN 4,767,008). *Slagel* and *McCluney* are ancient 1930's era humidifiers used for the very first refrigerators. It is important to note that these early refrigerators did not have the forced air coolant systems at issue with the present invention. *Paine* teaches a plastic lattice produce container such as has existed for some time in the agricultural industry. Fully, one half of the background section of the present invention is dedicated to discussing the significant disadvantages of containers like the *Paine* basket. For example, one significant disadvantage is that the lattice work operates much

like a cheese grater cutting and damaging any fruit coming in contact with the walls of the prior art container. This is catastrophic problem when used with soft fruit such as strawberries, for example. Shipping fruit across country in such a container destroys so much of the fruit that an end user can be forced to discard 10-15% or more of the fruit shipped. Also, such damage degrades the appearance and thereby the market value of such fruit. *Warnecke* teaches a drug shipment container having snappable lid.

**Claims 38, 50, 53, 83:**

**Claims 38, 50, 53, 83** are rejected as being obvious in view of the cited combination of *Slagel*, *McCluney*, *Paine* and *Warnecke*. **Claim 38** is a produce container comprising having a basket body with a lid and a latch for securing the lid to said basket body. Claim 38 has been amended to more clearly articulate one advantageous feature of the invention. The ventilation slots are configured so that “at least one ventilation slot is arranged so that an airflow of cooling air can pass through the interior of the container” and configured so that “the lid is attached to the basket body using a hinge and wherein the hinge includes at least one of said ventilation slots formed therein.” No such ventilated hinge is taught by the cited art.

Consequently, the cited art fails to establish a *prima facie* case of obviousness as to Claim 38.

Moreover, as to **Claim 50**, the cited art fails to teach “the basket body and the lid are devoid of structural ribbing.” The structural ribbing depicted in *Paine* clearly teaches the exact opposite of the invention claimed here. For the reasons expressed above, namely, that the ribbing of *Paine* will do serious damage to soft fruit (e.g., strawberries) this is a significant distinction. Moreover, without the ribbing *Paine* has no ventilation at all. Thus, for this additional reason, the cited art fails to establish a *prima facie* case of obviousness as to Claim 50.

**Claim 53** has been cancelled. Thus, this grounds of rejecting Claim 53 is moot.

Moreover, as to added **Claim 83**, the cited art fails to teach that a “bottom surface of the produce container is configured to enable cooling air to flow underneath the container”. This is simply absent from the cited art. Thus, for this additional reason, the cited art fails to establish a *prima facie* case of obviousness as to Claim 83. Accordingly, the Applicants respectfully request that these grounds for rejection be withdrawn.

**Claims 39-48, 54-57, 84, and 85:**

**Claims 39-48, 54-57, 84, and 85** stand rejected as being obvious in view of the cited combination of *Slagel*, *McCluney*, *Paine* and *Warnecke*.

**Claim 39** as presently amended claims a produce container with “a basket body having substantially smooth sided walls” and “a plurality of ventilation slots formed between the basket body and the lid ... arranged so that a bi-directional airflow of cooling air can pass through the interior of the container.” The specification well explains the concept of bi-directional cooling, which for example, comprises two flows of cooling air being directed in substantially direction substantially perpendicular to one another. See, e.g., Specification, at page 11, lines 3-17 describing for example Fig. 1. It is quite clear that the cited combination of references is not smooth-walled (See, *Paine*) and none of the cited references teach or express any appreciation of the advantages of bi-directional cooling. Moreover, in order to even make any case at all that the cited references teach any bi-directional cooling the *Paine* reference must be used (none of the other references enable such cooling). *Paine* is defective because it teaches a non-smooth walled container which will damage the fruit making it unsuitable for its intended purpose. Thus, *Paine* teaches away from the cited combination of references and is not applicable. Absent smooth walls and bi-directional cooling the cited combination of references fail to establish a *prima facie* case of obviousness as to Claim 39.

Accordingly, it is argued by the Applicants that the cited art fails to establish a *prima facie* case of obviousness as to Claim 39. Therefore, Applicants respectfully request that this ground for rejecting Claim 39 be withdrawn. Moreover, the limitation of bi-directionality is further clarified in added Claims **84** and **85**. Additionally, for at least the reasons discussed above with respect to Claim 39 it is also submitted that a *prima facie* case of obviousness has not been established with respect to dependent Claims **40-48, 54-57, 84, and 85**. Consequently, Applicants respectfully request that this ground for rejecting Claims 40-48, 54-57, 84, and 85 also be withdrawn.

**Claims 58-59 and 61-64:**

**Claims 58-59 and 61-64** also stand rejected as being obvious in view of the cited combination of *Slagel*, *McCluney*, *Paine* and *Warnecke*. But, again as discussed above with respect to Claim 39, the cited art does not appreciate the advantages of “a basket body having substantially smooth sidewalls”. For at least this reason, Claim 58 and dependent claims 59 and 61-64 are believed to be allowable. Moreover, for claims 61 and 62 the added limitation of a bottom portion configured to allow cooling flow to pass under the containers is also not

taught by the cited references. Thus, for at least these reasons it is argued by the Applicants that the cited art fails to establish a *prima facie* case of obviousness as to Claim 58. Therefore, Applicants respectfully request that this ground for rejecting Claim 58 be withdrawn. Moreover, for at least the reasons discussed above with respect to Claim 58 it is also submitted that a *prima facie* case of obviousness has not been established with respect to dependent Claims 59 and 61-64. Consequently, Applicants respectfully request that this ground for rejecting Claims 58-59 and 61-64 also be withdrawn.

**Claims 65-82:**

**Claims 65-82** also stand rejected as being obvious in view of the cited combination of *Slagel, McCluney, Paine* and *Warnecke*.

**Claim 65** as presently amended claims a produce container with “a basket body”, “a lid”, and “a latch for securing the lid to said basket body” and “a plurality of ventilation slots arranged to enable bi-directional cooling airflow through interior of the container”. As explained previously, the specification well explains the concept of bi-directional cooling, which for example, comprises two flows of cooling air being directed in substantially direction substantially perpendicular to one another (e.g., Specification, p.11: Ins. 3-17 describing Fig. 1). It is quite clear that the cited combination of references do not conceive of the advantages of enabling bi-directional cooling or containers specially adapted to facilitate such cooling. Quite simply none of the cited references teach or express any appreciation of the advantages of bi-directional cooling. Absent this limitation the cited combination of references fail to establish a *prima facie* case of obviousness as to Claim 39.

Moreover, as to **Claim 66** the further limitation of “the walls of the basket are substantially smooth and wherein the plurality of ventilation slots are formed in an upper portion of the produce container” is also claimed. Thus, in addition to the limitations of Claims 65, **Claim 66** claims a smooth-walled container. It is quite clear that the cited combination of references is not smooth-walled (See, *Paine*) and none of the cited references teach or express any appreciation of the advantages of bi-directional cooling. Moreover, in order to make any case at all that the cited references teach any bi-directional cooling the *Paine* reference is required (i.e., none of the other references can even enable such cooling). *Paine* is defective because it teaches a non-smooth walled container, which by such construction is very damaging to the fruit inside, thereby making it unsuitable for its intended purpose. Thus, *Paine* teaches away from the cited combination of references and is not applicable. Absent

smooth walls and bi-directional cooling the cited combination of references fail to establish a *prima facie* case of obviousness as to Claim 66. Therefore, this rejection of Claim 66 should be withdrawn. It should be noted that dependent Claims 67-75 also include these limitations and for at least that reason should also be allowable.

Also, as to **Claim 76** the further limitation of a basket body that “includes a bottom surface enabling a cooling airflow to pass underneath the container” is also claimed. Thus, in addition to the limitations of Claims 65, **Claim 76** is constructed to enable coolant flow under the container when set in a tray. Thus, the cited combination of references fail to teach all of the claim limitations and therefore fails to establish a *prima facie* case of obviousness as to Claim 76. It should be noted that dependent Claims 77-82 also include these limitations and for at least that reason should be allowable.

Regarding the cited combination of *Slagel, McCluney, Paine and Warnecke* it is respectfully submitted that the cited art fails to establish a *prima facie* case of obviousness as to Claims 39-43, 45-48, 50, 52-59, 61, 62, 64-81. Therefore, Applicants respectfully request that these grounds for rejecting Claims 39-43, 45-48, 50, 52-59, 61, 62, 64-82 be withdrawn.

**Rejections based on USPN 6,074,676 and 5,738,890:**

Claims 1-17, 20-32, 35-37, 38-43, 45-48, 50, 52-59, 61-62, and 64-82 have been rejected under the judicially created doctrine of obviousness type double patenting as being unpatentable over USPN 6,074,676 (the ‘676 patent) and USPN 5,738,890 (the ‘890 patent). As to Claims 1-37, these claims have been withdrawn and are therefore not at issue and as to those claims (Claims 1-37) this grounds for rejection are moot.

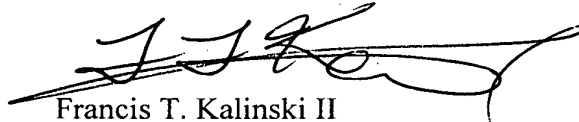
As to Claims 38-82 and added Claims 83-85, a terminal disclaimer has been is filed herewith. The assignee of the 6,074,676 and the 5,738,890 patents, Plexiform Company, is was a wholly owned subsidiary of Sambrailo Packaging, the assignee of the present patent application. Plexiform was merged into Sambrailo which became the common owner of the above patents and is also the assignee of record for the present patent application. Thus, the above patents and the present application are commonly owned.

Additionally, a Terminal Disclaimer in compliance with 37 CFR 1.321 is filed herewith. Accordingly, the Applicants respectfully request that these grounds for rejecting Claims 38-43, 45-48, 50, 52-59, 61-62, and 64-82 be withdrawn.

Accordingly, the Applicants respectfully submit that the cited art fails to establish a *prima facie* case of obviousness as to all pending claims (Claims 38-43, 45-48, 50, 52-59, 61-62, and 64-85). Consequently, Applicants respectfully request that this ground for rejecting Claims 38-43, 45-48, 50, 52-59, 61-62, and 64-85 be withdrawn.

Respectfully submitted,

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